

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF MISSISSIPPI  
GREENVILLE DIVISION

ROBERT EARL CLAYBORNE  
Plaintiff

V.

NO. 4:95CV377-B-B

UNITED STATES DEPARTMENT OF ARMY  
Defendant

**MEMORANDUM OPINION**

This cause comes before the court upon the defendant's motion to dismiss. The court has duly considered the parties' memoranda and exhibits and is ready to rule.<sup>1</sup>

**FACTS**

The plaintiff was confined to the Mississippi State Mental Hospital in 1975. Upon his release, he attempted to join the United States Army but was denied entry due to his history of mental illness. In 1979, while living in Minnesota, an army recruiter asked the plaintiff to join the service. When the plaintiff explained that he was ineligible due to his earlier confinement, the recruiter assured the plaintiff that he (the recruiter) would see to it that the plaintiff was accepted. On more than one occasion the plaintiff expressed concern that he might get into trouble, but each time the recruiter advised him not to worry.

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<sup>1</sup> The plaintiff has filed a "Motion Not to Dismiss" which the court will simply treat as a response to the defendant's motion.

Shortly after the plaintiff entered the army in 1979, he began having problems again, and had to be put on medication. In the process, the army discovered the plaintiff's history of mental illness. The army placed the plaintiff in a mental hospital, from which the plaintiff escaped and returned home to Minnesota. The army arrested the plaintiff soon thereafter for being absent without leave (AWOL).

According to the plaintiff, he was given an option to be discharged or face up to ten years in prison. The plaintiff chose to be discharged and signed the appropriate paperwork. The army granted the plaintiff excess leave until the paperwork could be processed, and the plaintiff again returned to Minnesota. When a problem arose in processing the plaintiff's paperwork, the army sent the plaintiff a notice to report to Fort Knox, Kentucky. The plaintiff, who claims he never received the notice, failed to report, and the army again arrested the plaintiff for being AWOL.

The army subsequently granted the plaintiff an "under other than honorable conditions" discharge in February of 1981. In 1992, the plaintiff challenged his discharge status by filing a petition with the army discharge review board, which granted the plaintiff's petition in 1994. The board, finding the plaintiff's discharge status to be inequitable due to his documented history of mental illness, changed the plaintiff's discharge status to honorable.

The plaintiff thereafter filed this action seeking \$537 million in damages for the following alleged actions: (1) the recruiter's negligence in placing the plaintiff in the army; (2) forcing a dishonorable discharge upon the plaintiff when the army knew it was providing plaintiff with a mind altering drug; and (3) causing the plaintiff fifteen years of pain and suffering.

#### **LAW**

The plaintiff's complaint fails to identify the basis of the court's jurisdiction and the source of his causes of action. However, it appears from reading the plaintiff's prayer for relief that his complaint is one that arises under the Federal Tort Claims Act (FTCA) (28 U.S.C. §§ 1346(b), 2671 et seq.). As such, the plaintiff is required to file a claim form with the appropriate federal agency prior to filing suit. 28 U.S.C. § 2675(a). The plaintiff may not file suit until the agency has denied his claim, or until six months have passed without a decision. 28 U.S.C. § 2675(a). Failure to file a claim prior to filing suit bars a plaintiff from pursuing his action in a court of law. Cook v. United States, 978 F.2d 164, 165-166 (5th Cir. 1992) (furnishing notice of claim to appropriate federal agency is jurisdictional prerequisite to filing suit under the FTCA).

One of the plaintiff's counts in his prayer for relief uses the term "civil rights violation." However, the plaintiff does not identify any code section through which the claim is brought, nor

does the language within the count allege any facts which could constitute a civil rights violation. To the extent that the plaintiff has filed a claim for a civil rights violation, the court finds that the plaintiff has failed to state a claim upon which relief may be granted.

Furthermore, any cause of action the plaintiff may have had is barred by the statute of limitations. Actions filed under the FTCA must be presented to the appropriate federal agency within two years of the date upon which the cause of action accrues or within six months after the final denial of the claim by the agency to which it was presented. 28 U.S.C. § 2401(b). The plaintiff was discharged from the army on February 17, 1981. He did not file this action until November 30, 1995, over fourteen years after his alleged cause of action accrued. Therefore, his complaint is barred by the applicable statute of limitations.<sup>2</sup>

The plaintiff argues that the statute of limitations should be tolled on account of his mental incompetence. However, mental incompetence does not toll the limitations period for actions arising under the FTCA. Casias v. United States, 532 F.2d 1339, 1342 (10th Cir. 1976); Childers v. United States, 442 F.2d 1299,

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<sup>2</sup> Any claim for civil rights violations the plaintiff may be attempting to assert is subject to a six-year statute of limitations. Miss. Code Ann. § 15-1-49 (1972) (amended 1990). Therefore, even if the plaintiff had successfully stated a claim for civil rights violations, it would be time-barred.

1303 (5th Cir. 1971), cert. denied, 404 U.S. 857, 30 L. Ed. 2d 99 (1971).

Even if the plaintiff was allowed to assert the doctrine of equitable tolling, the plaintiff has failed to make the appropriate showing necessary to toll the limitations period. The plaintiff bears the burden of convincing the court that his mental condition prevents him from being able to comprehend his legal rights. See Speiser v. United States Dept. of Health and Human Servs., 670 F. Supp. 380, 384-385 (D.D.C. 1986), aff'd, 818 F.2d 95 (D.C. Cir. 1987). Although the plaintiff has argued that the statute should be tolled on account of his incompetence, the plaintiff has failed to provide the court with any evidence from which the court could find that his mental deficiency in 1981 (when this cause of action accrued) was sufficient to prevent the plaintiff from asserting these claims. Furthermore, the plaintiff has failed to offer any evidence that his mental incompetence was of sufficient duration so as to bring this cause of action, filed on November 30, 1995, within the statutory period. On April 6, 1992, the plaintiff filed a petition with the Army Discharge Review Board, seeking to have his discharge status upgraded to honorable. In his petition, the plaintiff raised the same issues set forth in his complaint in the present action. Therefore, even assuming his mental incompetence was sufficient to toll the limitations period in 1981, such tolling

would have ended by April 6, 1992, at the latest. Therefore, the court finds that the plaintiff's tolling argument is without merit.

**CONCLUSION**

For the foregoing reasons, the court finds that the defendant's motion to dismiss should be granted.

An order will issue accordingly.

THIS, the \_\_\_\_\_ day of March, 1996.

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NEAL B. BIGGERS, JR.  
UNITED STATES DISTRICT JUDGE